

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EARLAND J. COLLINS,

Plaintiff,

v.

CASE NO. 2:09-CV-13535
HONORABLE PAUL D. BORMAN

CARL L. COLLINS III,

Defendant.

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**OPINION AND ORDER DENYING LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE, DISMISSING COMPLAINT,
AND DENYING MOTION FOR U.S. MARSHAL TO SERVE COMPLAINT**

This matter is before the Court on Plaintiff's *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983, as well as his motion for the U.S. Marshal to serve the complaint upon the defendant. Plaintiff seeks leave to proceed without prepayment of the filing fee for this action. *See* 28 U.S.C. § 1915(a)(1). On September 14, 2009, the Court issued an order requiring Plaintiff to correct a filing deficiency and to show cause why his complaint should not be dismissed pursuant to the "three strikes" provision of 28 U.S.C. § 1915(g). On October 1, 2009, Plaintiff submitted a response to the Court's order consisting of a trust account statement. Plaintiff did not submit the requested affidavit of indigence with an authorization to withdraw funds from his prison account nor did he respond to the show cause portion of the Court's order.

Plaintiff has failed to correct the filing deficiency in this case. Moreover, under the Prison Litigation Reform Act ("PLRA"), the Court may dismiss a case if, on three (3) or more previous occasions, a federal court has dismissed the incarcerated plaintiff's action because it was frivolous

or malicious or failed to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(g). The Court's database reveals that Plaintiff has filed at least three (3) prior cases in federal court which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. *See:*

<u>Case No.</u>	<u>Defendant(s)</u>	<u>Dismissal Date</u>	<u>U.S. District Judge</u>
08-CV-14881	Wayne Co. Pros.	12/22/2008	Paul D. Borman
09-CV-11785	Warren Police Dept.	06/04/2009	Nancy G. Edmunds
09-CV-12315	Frank Murphy Hall	06/22/2009	Nancy G. Edmunds

Plaintiff has not challenged these dismissals in response to the Court's show cause order and his complaint concerns perceived misconduct by legal counsel. He neither alleges nor establishes that he "is under imminent danger of serious physical injury" so as to fall within the exception to the three strikes provision set forth in 28 U.S.C. § 1915(g). Plaintiff has thus failed to establish that he should be allowed to proceed on his complaint *in forma pauperis* despite the fact that he has had more than three prior lawsuits dismissed as frivolous or for failure to state a claim upon which relief may be granted.

Accordingly, the Court **DENIES** Plaintiff's request for leave to proceed without prepayment of the filing fee. Plaintiff is not authorized to proceed before this Court *in forma pauperis* pursuant to 28 U.S.C. § 1915(g). Additionally, the Court **DISMISSES** Plaintiff's complaint pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to the filing of a new complaint with payment of the \$350.00 filing fee. The Court notes that any such complaint will be reviewed to determine whether it should be served upon the defendant or summarily dismissed under 28 U.S.C. § 1915A(b), which requires the Court to dismiss a complaint brought against governmental entities,

officers, and employees if the complaint is “frivolous, malicious, or fails to state a claim upon which relief may be granted.” Given this determination, the Court also **DENIES** Plaintiff’s motion for the U.S. Marshal to serve the complaint upon the defendant.

Lastly, the Court concludes that an appeal from this order would be frivolous and, therefore, cannot be taken in good faith. *See 28 U.S.C. § 1915(a)(3); see also McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

IT IS SO ORDERED.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: October 30, 2009

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on October 30, 2009.

s/Denise Goodine

Case Manager